

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

CARLOS ASHLEY §  
v. § CIVIL ACTION NO. 9:11cv102  
MARK ROBERTS §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE  
AND ENTERING FINAL JUDGMENT

The Plaintiff Carlos Ashley, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights in the Texas Department of Criminal Justice, Correctional Institutions Division. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges. The sole named Defendant in the lawsuit is Mark Roberts, the practice manager for the dental health care provider at the Eastham Unit.

Ashley originally filed his lawsuit raising unrelated claims against different defendants, and a motion for severance was granted. In the present case, Ashley complains that he has not been provided with dentures. Roberts has been ordered to answer the lawsuit and has filed a motion for summary judgment.

In this motion, Roberts states that he is a practice manager, not a medical provider. He notes that he is an administrator and has no medical or dental degrees, nor does his position require one.

Roberts explains that when an inmate submits a request for dentures, or a unit dentist submits such a request on an inmate's behalf, the request is forwarded to the Dental Utilization and Quality Review Committee, which applies the criteria from the Correctional Managed Health Care policy manual. In this case, Dr. Fomby, the treating dentist, referred Ashley's request for dentures to the

committee, which determined that dentures were not medically necessary. Roberts contends that he had no personal involvement in the decision to deny Ashley dentures and that he did not have the power to order that Ashley receive dentures. He also invoked the defense of qualified immunity. Ashley did not file a response to the motion for summary judgment.

After review of the pleadings, the Magistrate Judge issued a Report recommending that Roberts' motion for summary judgment be granted and that the lawsuit be dismissed with prejudice. A copy of this Report was sent to Ashley at his last known address, return receipt requested, but no objections have been received; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 12) is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the Defendant's motion for summary judgment (docket no. 8) is hereby GRANTED and that the above-styled civil action be and hereby is DISMISSED with prejudice. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

So ORDERED and SIGNED this 23 day of January, 2012.



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Ron Clark, United States District Judge